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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/983,070      | 10/23/2001  | Vince Fischer        | 3768-088-27         | 8891             |

7590

08/05/2003

Supervisor, Patent Prosecution Services  
Piper Marbury Rudnick & Wolfe LLP  
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Washington, DC 20036-2412

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| EXAMINER |
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ELHILO, EISA B

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| ART UNIT | PAPER NUMBER |
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1751

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DATE MAILED: 08/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/983,070

Applicant(s)

FISCHER ET AL.

Examiner

Eisa B Elhilo

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☒ Claim(s) 5-12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 1751

Claims 1-12 are pending in this application.

### **DETAILED ACTION**

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Hirsch et al. (US 5,643,341).

Hirsch (US' 341) teaches a method of maintaining hair color and tone of previously color-treated hair. The method comprises the step of determining hair color and tone by visual recognition and applying to the hair a selected color maintaining composition that comprises direct dyes as claimed in claims 1 and 4 (see col. 11 and 12, claims 1, 4 and 8). Hirsch teaches all the limitations of the claims. Hence, Hirsch, anticipates the claims.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirsch et al. (US 5,643,341) in view of Lang et al. (5,690,921).

Art Unit: 1751

The disclosure of Hirsch (US' 341) is summarized above. Hirsch does not teach or disclose a color maintaining composition comprises an organic solvents and wherein the composition having a claimed ranges of pH as claimed in claims 2 and 3.

However, Hirsch teaches mixture of at least two prepared hair color maintenance shampoos mixed in volumetric ratios (see col. 12, lines 1-2), which implies that the mixed ingredients are in the liquid condition since they are measured by volumes. Further, Hirsch teaches a composition that comprises both acid direct dyes such as Txt. D&C Violet No. 2 and basic dyes such as basic red 76 and basic brown 16 (see col. 12, claim 8).

Lang (US' 921) teaches in analogous art a dye fixing composition comprising organic solvents (see col. 3, lines 65-66), and conventional dyes of acid direct dyes and basic direct dyes which are absorbed directly in the hair as claimed in claims 2 and 3 (see col. 4, lines 5-18).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time of the invention would have been motivated to modify the primary reference of Hirsch by adding the organic solvents as taught by Lang with a reasonable expectation of success. Such modification is obvious because the primary reference teaches a method of maintaining hair color comprising applying to a hair a composition that comprise liquid dyeing ingredients and direct dyes and the secondary reference teaches clearly the presence of organic solvents and direct dyes (acidic and basic) in a fixing color composition that applied to the hair, and, thus, a person of the ordinary skill in the art would be motivated to incorporate the organic solvents as carriers in the dye fixing or color maintaining composition that applied to the hair. Absent unexpected results.

Art Unit: 1751

With respect to the pH of the composition, it would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the pH of the composition by using a buffer compounds as taught by Lang (see col. 5, line 6) in order to get the effective ranges of the pH, and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed. Absent, unexpected results.

***Allowable Subject Matter***

3. Claims 5-12 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record does not teach or disclose a method for color-revitalizing a color tone of a hair comprising applying to the hair a revitalizing composition having characteristic features as claimed.

***Conclusion***

5 The remaining references listed on forms 1449 and 892 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Art Unit: 1751

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, appearing to read "Eisa Elhilo". The signature is fluid and cursive, with the first name "Eisa" and last name "Elhilo" clearly distinguishable.

Eisa Elhilo  
Patent Examiner  
Art Unit 1751

July 31, 2003